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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
[WAC 01 199 53050]

OFFICE: CALIFORNIA SERVICE CENTER DATE: APR 29 2005

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT: SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center. The application is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant claims to be a native and citizen of El Salvador who is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The director denied the application because he found that the applicant had been convicted of two misdemeanors.

On appeal, the applicant submits a statement and additional evidence.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant who is a national of a foreign state is eligible for TPS only if such alien establishes that he or she:

- (a) Is a national of a state designated under section 244(b) of the Act;
- (b) Has been continuously physically present in the United States since the effective date of the most recent designation of that foreign state;
- (c) Has continuously resided in the United States since such date as the Attorney General may designate;
- (d) Is admissible as an immigrant except as provided under section 244.3;
- (e) Is not ineligible under 8 C.F.R. § 244.4; and
- (f)
 - (1) Registers for Temporary Protected Status during the initial registration period announced by public notice in the FEDERAL REGISTER, or
 - (2) During any subsequent extension of such designation if at the time of the initial registration period:
 - (i) The applicant is a nonimmigrant or has been granted voluntary departure status or any relief from removal;
 - (ii) The applicant has an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal which is pending or subject to further review or appeal;
 - (iii) The applicant is a parolee or has a pending request for reparole; or

(iv) The applicant is a spouse or child of an alien currently eligible to be a TPS registrant.

An alien shall not be eligible for temporary protected status under this section if the Secretary of the Department of Homeland Security finds that the alien has been convicted of any felony or two or more misdemeanors committed in the United States. See Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a).

8 C.F.R. § 244.1 defines “felony” and “misdemeanor:”

Felony means a crime committed in the United States, punishable by imprisonment for a term of more than one year, regardless of the term such alien actually served, if any, except: When the offense is defined by the State as a misdemeanor and the sentence actually imposed is one year or less regardless of the term such alien actually served. Under this exception for purposes of section 244 of the Act, the crime shall be treated as a misdemeanor.

Misdemeanor means a crime committed in the United States, either

- (1) Punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any, or
- (2) A crime treated as a misdemeanor under the term "felony" of this section.

For purposes of this definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor.
8 C.F.R. § 244.1.

An alien is inadmissible if he has been convicted of a crime involving moral turpitude (other than a purely political offense), or if he admits having committed such crime, or if he admits committing an act which constitutes the essential elements of such crime. Section 212(a)(2)(A)(i)(I) of the Act.

An alien is inadmissible if he has been convicted of, or admits having committed, or admits committing acts which constitute the essential elements of a violation of (or a conspiracy to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 USC 802). Section 212(a)(2)(A)(i)(II) of the Act.

Any alien convicted of 2 or more offenses (other than purely political offenses), regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme of misconduct and regardless of whether the offenses involved moral turpitude, for which the aggregate sentences to confinement were 5 years or more is inadmissible. Section 212(a)(2)(B) of the Act.

An alien is inadmissible if a consular officer or immigration officer knows or has reason to believe he is or has been an illicit trafficker in any such controlled substance. Section 212(a)(2)(C) of the Act.

The record reveals the following offenses:

- (1) On July 12, 1996, the applicant's charge of theft of personal property in violation of section 484(a) PC, a misdemeanor, was dismissed in the furtherance of justice in the Municipal Court of Los Angeles, Van Nuys District, County of Los Angeles, and he was instead convicted of petty theft under \$40 without prior convictions in violation of section 490.1(a) PC, an infraction.
- (2) On July 19, 1996, the applicant was arrested in Los Angeles, California, and charged with hit and run/property damage in violation of section 20002(a)(1), a misdemeanor. (Docket # [REDACTED]) On May 16, 1997, that charge was dismissed in the Municipal Court of Los Angeles, Van Nuys Judicial District, County of Angeles, due to plea negotiation, and the applicant was instead convicted of failing to provide proof of financial responsibility at the scene of an accident in violation of section 16025(a) VC, an infraction.
- (3) On April 12, 1997, the applicant was arrested in Norwalk, California, and charged with hit and run/property damage in violation of section 20002(a)(1) VC, a misdemeanor.
- (4) On May 11, 2000, the applicant was arrested in Los Angeles, California, and charged with driving under the influence of alcohol or drugs, a misdemeanor.
- (4) On June 18, 2003, the applicant was convicted in the Municipal Court of Los Angeles, Metro Branch Judicial District, County of Los Angeles, of driving under the influence of alcohol with a blood alcohol content of 0.08% or greater in violation of section 23152(b) VC, a misdemeanor. Docket # [REDACTED]

Pursuant to a letter dated November 20, 2003, the applicant was requested to submit the final court disposition for all arrests since his arrival in the United States and evidence of nationality. In response, the applicant provided evidence of nationality and the court disposition of the offense in No. (4) above.

The director determined that the applicant that the applicant had been convicted of two or more misdemeanor offenses.

On appeal, the applicant acknowledges that he got into trouble when he was younger, but states he won't ever get into trouble again. He provides the final court disposition detailed in No. (2) above.

The record shows that the applicant has been convicted of one misdemeanor. Although the misdemeanor charges listed in Nos. (1) and (2) above were dismissed and the applicant was instead convicted of infractions, the applicant still has not provided any evidence revealing the final court dispositions of the offenses in Nos. (3) and (4) listed above. (It appears that the hit and run charges detailed in Nos. (3) and (4) above relate to two separate arrests.)

The applicant is ineligible for temporary protected status because of his failure to provide information necessary for the adjudication of his application. 8 C.F.R. § 244.9(a).

It is noted that the applicant filed a Form I-589, Request for Asylum in the United States, on September 29, 1994. The application was denied on April 21, 1995, and the applicant was referred for a deportation hearing before an Immigration Judge. The applicant failed to appear for his deportation hearing on November 14, 1995. Therefore, the Immigration Judge ordered the applicant deported in absentia.

On April 22, 1996, the District Director, Los Angeles, issued a Form I-166 ordering the applicant to report to the Los Angeles District Office for deportation to El Salvador on May 21, 1996, along with a Form I-205, Warrant of Deportation. The applicant failed to appear as ordered. The Warrant of Deportation remains outstanding.

An alien applying for temporary protected status has the burden of proving that he or she meets the requirements enumerated above and is otherwise eligible under the provisions of section 244 of the Act. The applicant has failed to meet this burden.

ORDER: The appeal is dismissed.